



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-583-853]

Certain Crystalline Silicon Photovoltaic Products from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (“Department”) preliminarily determines that certain crystalline silicon photovoltaic products (“certain solar products”) from Taiwan are being, or are likely to be, sold in the United States at less than fair value (“LTFV”), as provided in section 733(b) of the Tariff Act of 1930, as amended (the “Act”). The period of investigation is October 1, 2012 through September 30, 2013. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: EFFECTIVE DATE: (INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.)

FOR FURTHER INFORMATION CONTACT: Magd Zalok, Charles Riggle, or James Martinelli, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4162, (202) 482-0650, or (202) 482-2923, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

The Department published the notice of initiation of this investigation on January 29, 2014.<sup>1</sup> Pursuant to section 773(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by a period of 43 days.<sup>2</sup>

### Scope of the Investigation

The merchandise covered by these investigations is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials. For purposes of these investigations, subject merchandise also includes modules, laminates and/or panels assembled in the subject country consisting of crystalline silicon photovoltaic cells that are completed or partially manufactured within a customs territory other than that subject country, using ingots that are manufactured in the subject country, wafers that are manufactured in the subject country, or cells where the manufacturing process begins in the subject country and is completed in a non-subject country.

Subject merchandise includes crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

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<sup>1</sup> See Certain Crystalline Silicone Photovoltaic Products From the People's Republic of China and Taiwan: Initiation of Antidumping Duty Investigations, 79 FR 4661 (January 29, 2014).

<sup>2</sup> See Certain Crystalline Silicone Photovoltaic Products From the People's Republic of China and Taiwan: Postponement of Preliminary Determination of Antidumping Duty Investigations, 79 FR 30084 (May 27, 2014).

Excluded from the scope of these investigations are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS). Also excluded from the scope of these investigations are any products covered by the existing antidumping and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules, from the People's Republic of China. See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 FR 73018 (December 7, 2012); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order, 77 FR 73017 (December 7, 2012).

Also excluded from the scope of these investigations are crystalline silicon photovoltaic cells, not exceeding 10,000mm<sup>2</sup> in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Merchandise covered by these investigations is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of these investigations is dispositive.

## Methodology

The Department has conducted this investigation in accordance with section 731 of the Act. Constructed export price (“CEP”) and export price (“EP”) have been calculated in accordance with section 772 of the Act. Normal value (“NV”) has been calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at <https://iaaccess.trade.gov>, and is available to all parties in the Department’s Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at <http://enforcement.trade.gov/frn/>. The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

## All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated “all others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, de minimis or determined based entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated dumping margin for all other producers or exporters.

We based our calculation of the “All Others” rate on the weighted-average of the margins

calculated for Gintech Energy Corporation (“Gintech”) and Motech Industries, Inc. (“Motech”) using a simple average of the calculated margins. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents. For further discussion of this calculation, see memorandum entitled “Calculation of the All Others Rate for the Preliminary Determination of the Antidumping Duty Investigation of certain crystalline silicon photovoltaic products from Taiwan,” dated concurrently with this notice.

#### Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist for the producers or exporters during the period October 1, 2012 through September 30, 2013 at the following rates:

Producer or Exporter	Weighted-Average Dumping Margin (Percent)
Motech Industries, Inc.	44.18%
Gintech Energy Corporation	27.59%
All Others	35.89%

#### Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case

briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>3</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using IA ACCESS. An electronically filed request must be received successfully in its entirety by IA ACCESS, by 5:00 p.m. Eastern Standard Time, within 30 days after the date of publication of this notice.<sup>4</sup> Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of certain solar products from Taiwan as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*.

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<sup>3</sup> See 19 CFR 351.309.

<sup>4</sup> See 19 CFR 351.310(c).

Pursuant to 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds export price, as indicated in the chart above.<sup>5</sup> These suspension of liquidation instructions will remain in effect until further notice.

#### Postponement of Final Determination and Extension of Provisional Measures

Pursuant to requests from the mandatory respondents, Motech and Gintech, we are postponing the final determination. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.<sup>6</sup> Further, Motech and Gintech requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. The suspension of liquidation described above will be extended accordingly.<sup>7</sup>

#### Certification Requirements

If an importer imports solar panels/modules that it claims do not contain solar cells that were produced in Taiwan, the importer is required to maintain the importer certification included in the Department's cash deposit instructions. Furthermore, if an importer imports solar panels/modules that were assembled in Taiwan and it claims the panels/modules do not contain solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in Taiwan, the importer is required to maintain the certification included in the Department's cash deposit instructions. The importer and exporter are also required to maintain an exporter certification included in the Department's cash deposit instructions if the exporter of

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<sup>5</sup> See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations, 76 FR 61042 (October 3, 2011).

<sup>6</sup> See also 19 CFR 351.210(b)(2) and (e); see also Letter from Motech to the Department, regarding "Request for Extension of Final Determination" (July 9, 2014); see also Letter from Gintech to the Department, regarding "Gintech Request to Postpone Final Determination" (July 10, 2014); see also Letter from Petitioner to the Department, regarding "Request to Extend Antidumping Duty Final Determination in the Event of a Negative Preliminary Determination" (July 14, 2014).

<sup>7</sup> Id.

the panels/modules for which the importer is making the claim is located in Taiwan. The importer and Taiwan-exporter are also required to maintain sufficient documentation supporting their certifications. We note that while importers and Taiwan-exporters will be required to maintain the aforementioned certifications and documentation, they will not have to provide this information to CBP as part of the entry documents, unless the certification or documentation is specifically requested by CBP.

If it is determined that the certification or documentation requirements noted in the certification have not been met, the Department intends to instruct CBP to suspend all unliquidated entries for which these requirements were not met and require the posting of an antidumping duty cash deposit on those entries equal to the exporter specific rate in effect at the time of the entry.

If a solar panel/module contains some subject solar cells, or if a solar panel/module assembled in Taiwan contains solar cells manufactured in third countries using ingots, wafers, or partially produced solar cells manufactured in Taiwan but the importer is unable, or unwilling, to identify the total value of the panel/module subject to provisional measures, the Department intends to instruct CBP to suspend all unliquidated entries for which the importer has failed to supply this information and require the posting of an antidumping duty cash deposit on the total entered value of the panel/module equal to the exporter specific rate in effect at the time of the entry.

#### International Trade Commission (“ITC”) Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final



determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain solar products from Taiwan before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: July 24, 2014.

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Paul Piquado.  
Assistant Secretary  
for Enforcement and Compliance.

## Appendix

### **List of Topics Discussed in the Preliminary Decision Memorandum**

1. Summary
2. Background
3. Period of Investigation
4. Postponement of Preliminary Determination
5. Postponement of Final Determination and Extension of Provisional Measures
6. Scope of the Investigation
7. Scope Comments
8. Selection of Respondents
9. Discussion of Methodology
10. Fair Value Comparisons
  - A. Determination of Comparison Method
  - B. Results of the Differential Pricing Analysis
11. Product Comparisons
12. Exclusions of Reported Indirect Sales to China for Gintech and Motech
13. Exclusions of Further Manufactured Sales for Motech
14. Date of Sale
15. Export Price/Constructed Export Price
  - A. Gintech
  - B. Motech
16. Normal Value
  - A. Home-Market Viability
  - B. Affiliated Party Transactions and Arm's-Length Test
  - C. Level of Trade
    - a. Gintech
    - b. Motech
  - D. Cost of Production
    - a. Calculation of Cost of Production
    - b. Test of Comparison Market Prices
    - c. Results of the Costs of Production Test
  - E. Calculation of Normal Value Based on Comparison Market Prices
17. Currency Conversion
18. Verification
19. Conclusion